

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1164 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

RANUBHA DHIRUBHA

Appearance:

MS.HARSHA DEVNANI A.P.P. for Petitioner
MR MJ BUDDHBHATTI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE D.P.BUCH

Date of decision: 20/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

1. The Judgment dated September 16, 1985, rendered by learned Additional Sessions Judge, Jamnagar in Sessions case No.33/85 acquitting the respondents of the offences punishable under Sections 302, 323, 326, 447, 506 (2) read with Section 34 of the Indian Penal Code is subject matter of challenge in the present appeal, which is filed under Section 378 of the Code of Criminal Procedure.

2. The incident in question is alleged to have taken place on December 21, 1984 at about 5.00 p.m at village Metiya of Kalavad Taluka, District Jamnagar. On the date of incident, deceased Balubha Lakhmanji who was a resident of village Metiya had gone to his Wadi in the evening accompanied by his minor son Vimal. Within 15 to 20 minutes of the deceased having gone to his Wadi, Vimal came home weeping and reported to witness Prakash and others that the respondents were beating Balubha. On receipt of information, Prakash Balubha and his mother Gangaba went towards the Wadi and found Balubha Lakmanji lying dead in a pool of blood. Witness Prakash and Witness Gangaba found that the respondents were standing slightly away from the place where the deceased was lying. Meanwhile the younger brother of Prakash named Udaysinh also came there and it is the case of the prosecution that there upon the respondents ran away from the place. The prosecution has claimed that respondent No.1 was armed with a Dharia whereas respondent No.2 had an iron shod stick whereas, respondent No.3 was armed with a pick-axe. Witness Prakash asked his brother Udaysinh to bring Matador and thereafter he in the company of his mother came to his house for the purpose of bringing cart to the place of incident so that the deceased could be brought home in the said cart. After bringing the cart to the place of incident, deceased was placed in the cart. According to the prosecution while taking dead body of the deceased to their home, Prakash and Gangaba reached near the field of Takubhai and at that time all the three respondents intercepted them and respondent No.1 injured Prakash on his right arm by dharia; whereas respondent No.2 gave an axe blow on left shoulder of Prakash and when Gangaba i.e. mother of Prakash intervened, she was hit with iron shod stick by the respondent No.2. As Prakash and his mother were assaulted Prakash drew the cart fast but the three respondents followed them upto their house and challenged them to move out from the house. At about 6 to 6.30 hours, the younger brother of Prakash i.e. Vikram came weeping from Nanavadala and informed Prakash and others

that he was beaten with stick by Respondent No.3, whereas respondent No.1 had caused injuries to him by means of dharua and had been threatened not to come out of the house. At about 8 hours on the said day, Udaysinh the younger brother who was asked by Prakash to bring matador came to his house and informed Prakash and Gangaba that when he was coming with Matador, the respondents had accosted him near the outskirts of the village and had told him to take the Matador back and therefore, son of one Abhaysinh had taken back the Matador. He also informed Prakash that after he got down from Matador, the respondent No.2 had delivered a stick blow and was able to escape assault from others. Ultimately Vajeshang Bhikaji who is brother-in-law of deceased Balubha came with an ambulance at about 4.30 a.m. next day and brought injured Prakash, injured Gangaba, injured Vikram and injured Udaysinh at Rajkot Civil Hospital Rajkot. It may be stated that according to the prosecution Vajeshang Bhikaji was informed by Bhupatsinh Kathodji about the incident and therefore he had gone to village Metiya with ambulance to bring injured to Rajkot. At Rajkot Civil Hospital Police Head Constable Vishaman Somla was on duty. He noted down the information conveyed to him by Vajeshang Bhikaji and informed Pradyumnagar police station in writing as well as on telephone. Thereafter he recorded First Information Report given by Prakash about the incident which was later on sent to the Kalavad police station by the Officer of Pradyumnagar police station because the incident had taken place within the jurisdiction of Kalavad police station. Before the information was transferred to Kalavad Police Station, P.S.I. Mr.V.S. Gohil of Kalavad Police Station had received wireless message on December 22, 1984 at about 9.30 hours regarding free fight at village Metiya, and therefore after making entry in the Police Station diary he had proceeded towards village Metiya at about 9.45 hours in the morning alongwith a Jamadar. When he reached the place of incident, he found that a crowd consisting of about 80-85 persons and one Pravin was there. Pravin informed P.S.I. Mr.Gohil about what had happened and also informed him that the dead body of deceased was lying in the house. Therefore Mr.Gohil held inquest on the dead body and prepared panchnama. Mr.Gohil also recorded statements of the witnesses and drew panchnama of place of incident as shown by witness Hulashba. He made inquiry about the respondents who were then not available. The record of the case shows that the respondents presented themselves before the Police Officer voluntarily. Meanwhile, the F.I.R. transferred by Pradyumnagar Police Station was received at Kalavad Police Station at about 15.50 hours through Constable of

Pradyumnagar Police Station and therefore necessary investigation was made by Mr.B.V.Rabari, P.S.I. Kalavad Police Station. At the conclusion, of investigation, the respondents were chargesheeted for the offences punishable under Sections 323, 326, 447, 506 (2), 302, read with Section 34 of the Indian Penal Code. As the offence punishable under Section 302 of the Indian Penal Code is exclusively triable by Court of Sessions, the case was committed to Sessions Court, Jamnagar for trial where it was numbered as Sessions Case No.33/85. The learned Additional Sessions Judge, Jamnagar framed charge against the respondents at Exh.6 for the offences punishable under Sections 302, 323, 326, 447, 506 (2) read with Section 34 of the Indian Penal Code as well as Section 135 (1) of the Bombay Police Act. The charge was read over and explained to the respondents who pleaded not guilty to the same and claimed to be tried. The prosecution therefore examined; (1) Dr.Kusumben N. Sheth as P.W.1 at Exh.19, (2) Dilawarsinh Udaysing Jadeja as P.W.2 at Exh.25, (3) Dr.Jyotsna V. Doshi as P.W.3 at Exh.28, (4) Prakash Balubha as P.W.4 at Exh.31, (5) Vimal Balubha as P.W.5 at Exh.32, (6) Pravinsinh Balubha as P.W.6 at Exh.33, (7) Ravuji Lakhmanji as P.W.7 at Exh.34, (8) Hulashba Takhuji as P.W.8 at Exh.35, (9) Vajeshang Bhikuji as P.W.9 at Exh.36, (10) Gangaba Balubha as P.W.10 at Exh.37, (11) Vikram Balubha as P.W.11 at Exh.38, (12) Udaysinh Balubha as P.W.12 at Exh.39, (13) Rajubha Abhaysinh as P.W.13 at Exh.40, (14) Bhupatsinh Kathodji as P.W.14 at Exh.41, (15) Rajendrasinh Fatesinh as P.W.15 at Exh.43, (16) Ashok M. Bevaji as P.W.16 at Exh.43, (17) Vishaman Somla as P.W.17 at Exh.44, (18) Vinodbhai Dalput as P.W.18 at Exh.50, (19) Jayantilal Devraj as P.W.19 at Exh.54, (20) Bhadurali Hasambhai as P.W. 20 at Exh.55, (21) Shamji Ramji as P.W.21 at Exh.56, (22) Chunilal Pragjibhai as P.W.22 at Exh.57, (23) Kanji Ranchhod as P.W.23 at Exh.58, (24) Harji Samji as P.W.24 at Exh.59, (25) Babarbhai V. Rabari as P.W.25 at Exh.60 and (26) V.S. Gohil P.W.26 at Exh.64 and also produced documentary evidence such as information conveyed by Vajeshang, First Information Report lodged by Prakash, postmortem notes of the deceased, panchnama of the place of occurrence, discovery panchnamas etc., to prove its case against the respondents. After recording of the evidence of prosecution witnesses was over, the learned Judge recorded the statements of the respondents under Section 313 of the Code of Criminal Procedure. In their statements the respondents denied the case of prosecution but did not examine any witness in support of their defence. On appreciation of evidence adduced by the prosecution, the learned Judge held that though homicidal death of deceased Balubha was established, it

was not proved by the prosecution that the respondents were responsible for causing death of Balubha. The learned Judge noted the discrepancies appearing in the evidence of prosecution witnesses as well as improvements made by them before the court and concluded that they were not reliable witnesses. In view of the above referred to conclusions, the learned Judge has acquitted the respondents by judgment dated September 16, 1985, giving rise to the present appeal.

3. Ms. Harsha Devnani, learned A.P.P. after taking us through the entire evidence on record submitted that evidence of witness Prakash read with the evidence of witness Gangaba proves that the respondents had caused death of deceased Balubha, and therefore, the respondents ought to have been convicted of the offences with which they were charged. According to the learned A.P.P., the said injured witness should have been believed by the learned Additional Sessions Judge regarding injuries sustained by them because normally injured person would not allow the real culprits to go scot free and involve innocent people falsely and therefore the appeal should be accepted against the respondents, so far as injuries sustained by injured witnesses are concerned. What was emphasized was that even if the Court comes to the conclusion that material improvements are made by the prosecution witnesses in their testimony before the Court that is no ground to disbelieve them regarding injuries sustained by them because the maxim falsus in uno falsus in omnibus is not applicable, and therefore, the appeal should be accepted.

4. Mr. M.J. Buddhbhatti, learned counsel for the respondents submitted that no cogent and reliable evidence has been led by the prosecution to establish the fact that the respondents or any of the respondents was responsible for causing death of deceased Balubha and as witnesses have tendency to implicate the respondents falsely in serious case of murder, their evidence regarding injuries caused to them should be disbelieved. The learned counsel for the defence argued that the injured witnesses have not only made improvements in their version of incident before the Court but they are contradicted on material particulars with their previous police statements and therefore the learned Judge did not commit any error in not placing reliance on their deposition before the Court. After referring to the evidence on record the learned counsel asserted that the complaint was lodged after deliberations and as the story narrated by the prosecution witnesses does not inspire confidence, the appeal should be rejected.

5. We have heard learned counsel for the parties and taken into consideration the evidence on record. The fact that deceased Balubha died a homicidal death is not in question and is amply proved by the evidence of Dr. Jyotsna V. Doshi, who had performed autopsy on the dead body and contents of the postmortem notes produced at Exh.29. The medical evidence on record satisfactorily establishes that deceased died due to multiple injuries causing Haemorrhage resulting into shock and death. The finding recorded by the learned Judge that deceased died homicidal death being eminently just is hereby upheld. However, the question remains as to whether any of the respondents is responsible for causing death of deceased Balubha. In order to prove the case against the respondents the prosecution had examined child witness Vimal Balubha as P.W.5 at Exh.32. The learned Judge found that at the time of recording of evidence the child witness was aged 6 years and therefore the learned Judge concluded that the witness would not be able to understand sanctity of the oath. In view of the said conclusion the learned Judge did not put any question to the child witness to ascertain whether he was able to understand the gravity of the matter. The learned A.P.P. asked the child witness as to who were the assailants of his father, but the child witness did not give any reply to the said question. The learned A.P.P. wanted to know from the child witness as to whether the assailants had beard and the child witness after saying "Yes" identified one Hardevsinh of village Goonda, who was present in the Court room. We may state that it is not the case of the prosecution at all that Hardevsinh of village Goonda had anything to do with the incident in question. Thereafter, the child witness was taken by the learned A.P.P. before the persons sitting in the Court room and the learned Judge has made note that at that time the child witness had identified the respondents as assailants of his father. The learned A.P.P. wanted to know from the child witness as to who had caused injuries to his father and by which weapon, but the child witness replied that he was not knowing anything. When the child witness was asked as to whether he had told anything to his mother, but the child witness did not reply. It was put to the child witness that was he knowing that he was an eye witness to the murder of his father, but the child witness said that he was not knowing. When the learned A.P.P. wanted to know from the child witness as to who had caused injury to his father, the child witness nodded his head in negative. Thereupon the learned A.P.P. sought permission from the Court to treat the child witness as hostile, which was granted by the learned

Judge, but surprisingly, no questions were put by the prosecution to the said witness. In cross-examination by defence, the witness admitted that he had identified the respondents as assailants of his father because the learned Government Pleader had accompanied him. Further the witness also admitted that the police had not got identified the respondents earlier. We may state that according to the prosecution Vimal was the only witness who had seen assault being mounted by the respondents on the deceased. However, the testimony of this child witness before this Court does not establish at all that any of the respondents were responsible for causing death of the deceased. At this stage, we would like to refer to the evidence of witness Gangaba. Witness Gangaba in her testimony before the Court has stated that when she was in the company of witness Prakash had gone to the place where the deceased was lying, the deceased was found alive, but was killed by the respondents when he was brought in the cart near her house. It is not the case of prosecution that the deceased was done to death by the respondents near the house of the deceased. Moreover, witness Gangaba was confronted with her earlier police statement wherein she had never stated that deceased was killed by the respondents near her house. The result of the above discussion is that prosecution has not proved that the respondents or any of the respondents was responsible for causing death of the deceased. Under the circumstances, the finding recorded by the learned Judge to the effect that the case against the respondents for the offence punishable under Section 302 of the Indian Penal Code is not proved by the prosecution being eminently just is hereby upheld.

6. So far as injury sustained by injured witnesses are concerned, we find that according to witness Prakashbhai he was assaulted by the respondents at three places continuously, but the medical evidence shows that he had received in all three injuries. It is relevant to notice that in his examination-in-chief this witness maintained that respondent No.1 was armed with dharia, whereas respondent No.2 was armed with an axe and respondent No.3 was armed with iron shod stick, but the contradiction with reference to his earlier police statement proved indicates that respondent No.1 was armed with Dharia, respondent No.2 was armed with stick whereas respondent No.3 was armed with a pick-axe. Thus this witness has made material improvements in his testimony before the Court to make his evidence consistent with the medical evidence. The conduct of this witness is also not natural one and free from doubt. Cross-examination of this witness indicates that he did not meet any of the

villagers or neighbours who have field adjoining the place of incident which is highly improbable. As observed by the learned Judge the presence of the respondents near the place of incident cannot be condemned because they have their field nearby. We may observe that though this witness was all throughout conscious at Rajkot Civil Hospital he did not lodge any information about the incident and the information was lodged at 8.10 a.m. by Vajeshang who is brother-in-law of the deceased and who had brought the injured to the Civil Hospital. Witness Gangaba in her evidence has claimed that on receipt of information from child witness Vimal she in the company of witness Prakash had gone to the place where deceased was lying and had thereafter returned home to bring cart so that the deceased could be brought home in the said cart, but witness Prakash has maintained in his deposition before the Court that on receipt of information from child witness Vimal he and his mother had straightaway gone in a cart to the place where the deceased was lying. If the story told by this witness that he was continuously beaten by the respondents and threatened till he reached home with his mother and dead body of his father, is believed he would not have sustained three injuries but would have received several injuries which is not proved by the medical evidence at all. Moreover, though delayed complaint was filed by Vajeshang at Rajkot Civil Hospital, Vajeshang had not stated in his complaint that deceased was killed by the respondents. It is an admitted position that Vajeshang had gone to village Metiya in an ambulance, and therefore, it is reasonable to infer that he must have been informed about the incident by the injured witness, but he did not refer to the assault on the deceased by any of the respondents in his complaint at all. At this stage it would be relevant to decide the question whether the information of witness Prakash recorded at Rajkot Civil Hospital by Head Constable Vishaman Somla can be treated as First Information Report. The record of the case clearly shows that at about 8.10 a.m. in the morning of December 22, 1984, Vajeshang who is brother-in-law of deceased had conveyed information to Vishaman Somla regarding injuries to witness Prakash Balubha and witness Gangaba Balubha by the respondents. This information given by Vajeshang was reduced to writing and noted in the register maintained at the Police chowky which is situated within the precinct of the hospital. This information was thereafter conveyed to Rajkot city Pradyumnagar Police Station where entry No.19/84 was made. As it was found that the alleged offence had taken place within the jurisdiction of Kalavad Police Station the information was sent to

Kalavad Police Station at about 12.15 noon with police constable of Rajkot City Pradyumnagar Police Station and was received at Kalavad Police station at about 15.50 hours. In our view, therefore Exh.46 could not have been treated as First Information Report in the case and for all practical purposes the information conveyed by Vajeshang to the Head Constable at Rajkot Police Station will have to be treated as First Information Report, in the case, whereas so called First Information Report lodged by witness Prakash will have to be treated as his statement under Section 161 of the Code of Criminal Procedure. In this statement witness Prakash has stated that at the time when he and his mother had gone to the place where deceased was lying, they were followed by his younger brother Udaysinh, but Udaysinh who is examined as P.W.12 at Exh.39 in terms has stated that he had never gone to the place where his father was lying. Thus witness Prakash has not only the tendency to implicate the respondents in a serious case but also to introduce witnesses in support of his case before the Court. On overall view of the evidence of witness Prakash we are satisfied that his version before the Court is full of inconsistencies, material improvements as well as contradictions and therefore it would not be safe to rely upon his evidence regarding injury sustained by him. So far as witness Gangaba is concerned she has also tendency to implicate the respondents falsely for murder of deceased Balubha. As observed earlier, she had gone to the extent of saying that deceased was killed in her presence and in the presence of her son Prakash near her residence which is not the case of any of the prosecution witnesses. The case of witness Gangaba that the respondents had killed the deceased near the house, stands completely contradicted with her previous Police statement. This witness has also claimed in her testimony before the Court that she was belaboured at three places but the medical evidence indicates that she had received only one injury. Had she been attacked by the respondents with different weapons, as stated by her, she would not have received only one injury but would have received number of injuries. According to this witness, in the cart she had placed mattress and deceased was brought in the said cart, but surprisingly no mattress was at all attached by the Investigating Officer during the course of investigation. She claimed before the Court that Udaysinh was administered threats in her presence but her police statement would indicate that she had not witnessed threats being administered to Udaysinh but had learnt about the threats from Udaysinh. She has also claimed that she had witnessed assault on witness Vikram Balubha as P.W.11 at Exh,38, but from her police

statement it is clear that she had not witnessed assault on Vikram by the respondents but had learnt about the said assault from Vikram himself. Even Vikram has not maintained before the Court that his mother Gangaba was present when he was belabored by the respondents. The evidence of this witness would indicate that witness Gangaba is lying before the Court, on material particulars and has improved her version to implicate the respondents under Section 302 of the Indian Penal Code for murder of deceased Balubha. Having regard to the totality of the evidence of this witness, we are of the opinion that the learned Judge did not commit any error in not placing any reliance on her evidence even with regard to the injuries sustained by her. Witness Vikram Balubha has claimed before the Court that respondent No.3 had caused injury on his right chest with a stick whereas respondent No.1 had caused injury on his right hand as well as on thigh with a blunt portion of dharia at about 5.00 p.m. on the date of incident. It is the case of the prosecution that at about 5.00 p.m. on the date of the incident respondents had caused death of the deceased Balubha whereas this witness says that he was belabored by the respondents at the outskirts of the village at the same time which is not probable at all. The medical evidence on record does not indicate that this witness had sustained any injury on thigh which could have been caused by blunt portion of dharia. Moreover, why respondent No.1 should use blunt portion of dharia while mounting assault on this witness is not explained by the witness at all. Having regard to the testimony of this witness we are satisfied that his evidence is not reliable and rightly discarded by the learned Judge. Another witness Udaysinh examined as P.W.12 at Exh.39 has claimed before the Court that on receipt of information from child witness Vimal, his mother and his brother had gone to the place where his father was lying and he had met them while the dead body of the deceased was being brought and he was asked by witness Prakash to go to Wadala for bringing a Matador. The witness has claimed that when he was returning to his village with a Matador he was accosted by the respondents and though respondent No.2 had caused injury to him on his back with a stick, he was able to escape attack from others which does not appear to be probable. In cross-examination, by the learned counsel for defence, the witness stated that two stick blows were given on his back by respondent No.2, but the medical evidence on record shows that he had received only one injury on left side back of chest. Moreover this witness has not explained anything as to how he had received abrasion on left middle finger. This witness maintained that his another brother Mahendra had

been to family Wadi but feigns ignorance as to when Mahendra had gone to Wadi. We may state that if Mahendra had gone to Wadi, Mahendra would have certainly witnessed assault being mounted by respondents on the deceased, but that is not the case of prosecution at all. Mahendra is not examined by the prosecution. Thus evidence of this witness also does not inspire confidence at all and is rightly disbelieved by the learned Judge. Witness Ravuji Lakhmanji as P.W.7 at Exh.34 has claimed in his testimony that he had seen respondent Nos.1 and 3 assaulting Gangaba when Gangaba was coming in cart with the dead body of the deceased. However, cross-examination of this witness makes it reasonably clear that he is a got up witness and examined to lend corroboration to the prosecution case. According to this witness he had helped witness Gangaba who is his sister-in-law in bringing down the dead body of the deceased. Though prosecution has claimed that deceased was bleeding profusely, surprisingly the clothes of this witness were never blood stained. If he had seen any assault by respondents on witness Gangaba he would have at least raised shouts or would have tried to intervene to save her sister-in-law, but admittedly, no such attempt was made by him. If it is the case of the prosecution that all the relatives of deceased Balubha were assaulted by the respondents then there was no earthly reason for the respondents to spare this witness who was younger brother of deceased, but admittedly this witness had not received any injuries at the hands of any of the respondents. Moreover, neither witness Prakash nor witness Gangaba refers to the presence of this witness near their house at all. Under the circumstances this got-up witness cannot be relied upon for the purpose of convicting any of the respondents of the offences with which they are charged. Another witness Hulashba Thakorji examined as P.W.8 at Exh.35 has claimed that she had accompanied witness Prakash and witness Gangaba when they had gone to bring the deceased to their home in cart but neither witness Prakash nor witness Gangaba has stated that they were accompanied by witness Hulashba. Hulashba has stated in her testimony that all the three respondents had mounted attack on witness Prakash, witness Gangaba as well as on her, but admittedly, she had not received any injury at all. In cross-examination, this witness has stated that respondent No.3 had given blow with reverse side of iron shod stick, but no medical evidence on record is produced to prove that she had sustained any such injury. Therefore the evidence of this witness also does not help the prosecution. Witness Vajeshang who is brother-in-law of the deceased had brought the injured to Civil Hospital at Rajkot, but as stated earlier he had

not stated before the Head Constable that the respondents had assaulted his brother-in-law Balubha. Cross-examination of this witness would indicate that this witness was knowing that the dead body of deceased was lying in the house when he had gone to bring the injured at the hospital, but surprisingly, this witness does not state a word about the assault by respondents on the deceased. In the information conveyed to head constable it was stated by this witness that respondent No.3 was armed with pick-axe. This witness claimed in his evidence that he had narrated the whole incident to the Police Officer who was posted at Nikava outpost, but the investigation made does not indicate that any such attempt was made by this witness to inform the Police Officer who was present at Nikava outpost. We may observe that the evidence of Investigating Officer shows that Nikava outpost is under the jurisdiction of Kalavad Police Station and is at a distance of 17 Kms., from village Metiya and according to the Investigating Officer, no information about the incident was conveyed at all at the said outpost. It is obvious that this witness has referred to attempts made by him to get the F.I.R. registered at Nikava outpost only to explain delay in filing complaint at about 8.10 a.m. at Rajkot Civil Hospital, but has not been able to explain the delay satisfactorily at all. Further, the medical certificate produced at Exh.23 would indicate that child witness Vimal Balubha aged 6 years was brought to Government Hospital at Rajkot at 6.45 a.m. on December 22, 1984 and on examination it was found that he had an abrasion on left shoulder with a contusion. None of the prosecution witnesses refers to any injury sustained by child witness Vimalsinh. Moreover, the medical evidence would indicate that all the injured witnesses were examined by medical officer at about 6.45 a.m. on December 22, 1984, but admittedly the complaint was lodged by witness Vajeshang at about 8.10 a.m. and the delay in lodging the said information is not explained at all. On overall view of the evidence on record we are satisfied that prosecution case against the respondents is highly doubtful and does not inspire confidence of the Court at all. Even the prosecution has failed to prove the motive which is one of the essential ingredients of an offence. This is an acquittal appeal in which the Appellate Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case pointed out by the learned Judge go to the root of the matter and strike a vital blow on the prosecution case. In such a case it would not be safe to set aside the order of acquittal, more particularly, when the evidence has not inspired confidence of learned Judge who had

opportunity to observe the demeanour of witnesses. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the respondents. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge. Even if second view as suggested by the learned A.P.P. is possible the acquittal of the respondents is not liable to be disturbed in the present case.

7. For the foregoing reasons, we do not see any merits in the appeal. The appeal therefore fails and is dismissed. The mudammal articles are ordered to be disposed of in terms of the directions given by the learned Trial Court in the impugned judgement.

(J.M. Panchal, J).

(D.P. Buch, J).

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